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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
)
Interconnection and Resale)
Obligations Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

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REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

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REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Pursuant to Sections 1.49, 1.415, and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. §§ 1.49, 1.415, and 1.419 (1994), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits the following comments addressing the Commission's "Second Notice of Proposed Rulemaking" ("NPRM"), adopted April 5, 1995, and released April 20, 1995, [FCC 95-149] in the above-captioned proceeding:

I. INTEREST OF NARUC

NARUC is a quasi-governmental nonprofit organization founded in 1889. Its members include the governmental bodies engaged in the regulation of carriers and utilities from all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. NARUC's mission is to improve the quality and effectiveness of public utility regulation in America.

NARUC members include State and territorial officials charged with the duty of regulating the communications common carriers operating within their respective borders. These officials have the obligation to assure that communications services and facilities required by the public convenience and necessity are established and that service is furnished at just and reasonable rates.

In this proceeding, the FCC has asked whether equal access obligations should be imposed upon commercial mobile radio service ("CMRS") providers, what rules should govern requirements for interconnection service provided by local exchange carriers ("LECs") to CMRS providers, and whether the Commission should propose rules requiring CMRS providers to interconnect with each other. As part of these inquiries, the Commission has also raised issues of when and under what conditions State regulatory oversight of interconnection can or should be preempted.

Clearly, this proceeding raises issues of direct concern to NARUC's State commission membership. The FCC's ultimate determinations on these issues will provide the boundaries for the exercise of State regulatory oversight of current and emerging mobile wireless services.

II. DISCUSSION

Preemption of State Interconnection Authority.

In ¶ 44 of the NPRM, mimeo at 23, the FCC asked "In light of the foregoing discussion regarding the prematurity of imposing a general interstate {"CMRS-to-CMRS"} interconnection obligation at this time, we seek additional comment on the issue raised in the Interconnection NOI with respect to preemption of state-imposed interconnection requirements."

In response to this query, at least three commenters - GTE, Comments at 11, SNET Cellular, Comments at 11, and AT&T, Comments at 20 - suggested the FCC should preempt the State's authority even if the FCC chooses not to act.

SNET's comments were typical. They suggested that a multitude of state regulations would impose different and divergent costs in different states and impede a seamless national network, suggesting that preemption is required "as Congress intended for the FCC 'to establish a national regulatory policy for CMRS , not a policy that is balkanized state-by-state.' In furtherance of that objective, Congress has already preempted state regulation over CMRS..rates." SNET Comments at 12.

At Best the Record Suggests that Preemption is Premature.

As a preliminary matter, it is interesting to note, that the most prominent suggestion arising from these three commentors' arguments, is that, at best, the suggestion for preemption is premature.

Conspicuously absent from all of these comments is a single example of State interconnection policy inhibiting either the growth or deployment of wireless facilities. Indeed, the only empirical evidence available suggests just the opposite, as an examination of the pre-1993 historical growth and expansion rates of existing wireless operators in the face of the alleged smothering state regulation will demonstrate. No case specific, or even reference to an existing or past onerous State fiat is cited. Basically these commentors have only resubmitted what has become the standard industry boilerplate speculation bemoaning the possible impact of some hypothetical State regulation.

**Arguments Suggesting that Congress Wants the FCC to
Comprehensively Preempt State Regulation to
"Assure National Uniformity" or "Avoid Balkanization or Divergent
Costs and Regulations Across State Lines"
Are Disingenuous.**

Industry comments have also revived their previous arguments concerning the need to preempt to further Congresses' expectations and to avoid "balkanization" and "divergent" costs and regulations.

A simple examination of the history and the literal text of the Act completely undermine these suggestions. In amending section 332, the primary motivation evinced was to assure regulatory parity among similarly situated operators under the FCC's, NOT the States', regulations. Indeed, the revised Section 332 gives the States specific authority to impose "divergent" costs and requirements on CMRS operators via "other terms and conditions."

**Regardless of the Policy Arguments Presented,
The Statute does not Permit the FCC to Preempt.**

As argued in more detail in earlier submissions in this proceeding, NARUC respectfully suggests that an examination of the Budget Reconciliation Act, 47 U.S.C. 332(c)(1)(B) indicates clearly that "other terms and conditions" concerning CMRS regulation should be left to the States. Thus, should the FCC chose not to impose rules concerning CMRS provider's rights to and mandate to provide physical aspects of interconnection, it may not preempt related State regulatory initiatives. Moreover, this would seem to be the appropriate posture to adopt.

Preemption is Bad Policy.

If the FCC does not attempt to impose obligations, States will be in the best position to monitor the interconnection arrangements that are provided, and, should local conditions warrant, impose additional obligations to inter alia, enhance competition, further universal service goals, and achieve regulatory parity.

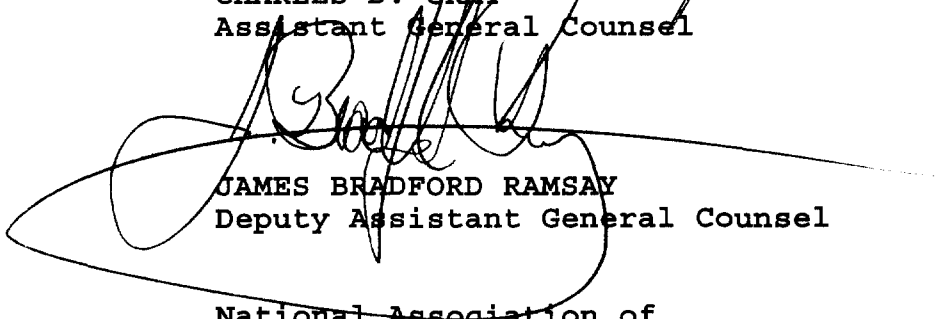
III. CONCLUSION

NARUC respectfully requests that the Commission carefully examine and give effect to these comments.


Respectfully submitted,

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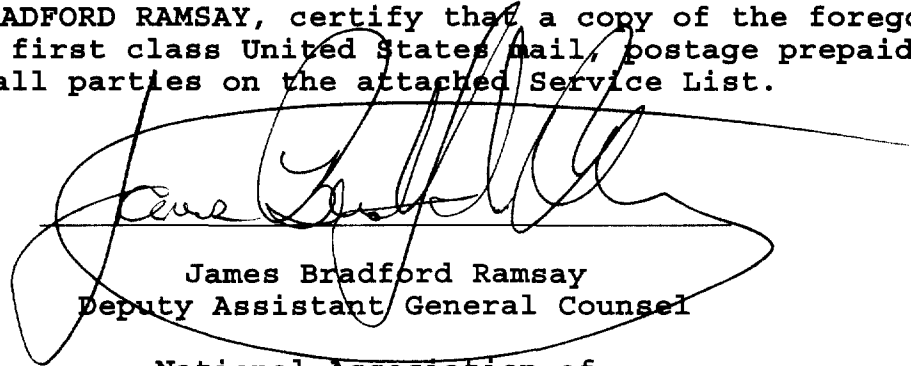
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July 14, 1995

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing was sent by first class United States mail, postage prepaid, to all parties on the attached Service List.

A large, stylized handwritten signature in black ink, which appears to read "James Ramsay", is written over the printed name and title of the signatory.

James Bradford Ramsay
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National Association of
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July 14, 1995

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